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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,038	04/18/2005	Dieter Hoffmeier	5067-68PUS	4779
27799 7590 07/03/2007 COHEN, PONTANI, LIEBERMAN & PAVANE 551 FIFTH AVENUE SUITE 1210 NEW YORK, NY 10176			EXAMINER WEINSTEIN, LEONARD J	
			ART UNIT 3746	PAPER NUMBER
			MAIL DATE 07/03/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/526,038

Applicant(s)

HOFFMEIER, DIETER

Examiner

Leonard J. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 6-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed February 28, 2005 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Nguyen et al. US 2002/00924286 A1. Nguyen teaches all the limitations for a submersible motor driven pump including: a housing 144 having an intake connection 146 and a discharge connection 17, an impeller 118 mounted in the housing 144 between the intake connection 146 and the discharge connection 17, a shaft 114 on which the impeller 118 is mounted, the shaft 114 being supported for rotation in the housing 144, via elements 132, 135, and 137, a cylindrical can 144" mounted in the housing 144, said shaft 114 extending concentrically into the can 144" to form a free space, defined between elements 138 and 144" and the space defined between elements 112 and 144", between the shaft 114 and the can 144", and anti-freeze apparatus 140 installed in the housing 144 for protecting the shaft 114; a ceramic bearing supporting, element 340 as

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shown in figures 5 and 6 (¶0020), the shaft 114, the anti-freeze apparatus 140 provided with an elastomeric (¶0017) bushing, elements 370' and 370'', supporting the ceramic bearing element 340 as shown in figures 5 and 6 (¶0020), in an entrance of the can 144'', and a water displacer 140 (¶0022) arranged in the free space, defined between elements 138 and 144'' and the space defined between elements 112 and 144''; and an elastomeric mount, elements 370' and 370'' as shown in figures 5 and 6 (¶0020), which supports the shaft 114 in the impeller 118.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nguyen et al. US2002/0094286 A1 in view of Atkinson et al. 3,808,830. Nguyen teaches all the limitations as discussed but fails to teach the following limitation taught by Atkinson for a motor driven pump 10 including an elastomeric diaphragm 124 mounted at a low point in a housing 82, the diaphragm 124 being expandable when subjected to ice pressure (col. 4 ll. 3-22). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a drain valve at low point within the housing of impeller pump operating in cold temperatures with a flexible diaphragm to avoid ice or frost from building up in a pumping chamber (Atkinson – col. 1 ll. 26-32).

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nguyen et al. US2002/0094286 A1. Nguyen discloses the claimed invention except for a shaft

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constructed of a ceramic material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a ceramic shaft in order to provide a shaft that becomes extremely brittle under cold temperatures. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure are cited on form 892 herewith.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leonard J. Weinstein whose telephone number is 571-272-9961. The examiner can normally be reached on Monday - Thursday 7:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call

800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LJW



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